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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,315	04/10/2002	Alejandro Berenstein	S63.2-10039	6886

490 7590 10/17/2006

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

WEBB, SARAH K

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/063,315

Applicant(s)

BERENSTEIN ET AL.

Examiner

Sarah K. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-41 and 43-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-41 and 43-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 38-41 and 43-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,911,732 to Hojeibane.

Hojeibane discloses a stent in Figure 3 that includes a coil segment (5) that connects two non-coil segments (271,272). Figures 1 and 4 show the structure of the non-coiled segments, which are considered to be "serpentine." Hojeibane explains that the stent can be either balloon expandable (column 8, lines 23-25) or self-expandable (column 9, lines 15-17). The coil segment, or connector, is made of thin steel (column 7, line 11). Since the connector (5) is steel and in the shape of a coil, or spring, it is inherently "spring steel." Hojeibane is considered to meet the new limitations, since the coil can be described as having "curved portions." A "curved portion" can simply be a segment of one of the turns of the helix. The helix extends 360 degrees around the longitudinal axis, so there are clearly portions of a turn that extend at least 90 degrees around the longitudinal axis. Adjacent "portions" are annularly aligned, longitudinally offset, and maintain a constant longitudinal distance from one another.

Hojeibane fails to form the coil segment to have a greater length than the non-coil segments. Hojeibane does state that the connector (5) can be varied to increase or decrease the flexibility of the stent (column 7, lines 34-41). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the coil segment to have a greater length than the non-coil segments, as Hojeibane teaches that this component may be altered to increase or decrease flexibility. This

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modification would have involved a mere change in the size of a component, which is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 40: Hojeibane discloses the segmented stent in Figure 3 to have multiple coil segments instead of only one coil segment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to limit the stent length to include only one coil segment connecting two serpentine segments, as this simple modification would allow the stent to be implanted within a shorter passageway in the body.

Regarding claims 51-53, Hojeibane fails to limit the diameter of the stent to 6 mm and the length to 20 mm. Hojeibane does state that the expanded diameter of the stent is variable (column 5, line 62) and the length can range from 3 cm (30 mm) to 18 cm (column 6, line 57). Applicant admits in the specification (paragraph 69) that the diameter of the stent can range from 1.5 mm to 25 mm and the length of the stent can range from 3 mm to 100 mm. It would have been an obvious matter of design choice to alter the dimensions of the Hojeibane stent, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Response to Arguments

2. Applicant's arguments filed 7/31/06 have been fully considered but they are not persuasive. The inclusion of "Boyle" in the 103 rejection statement was a typographical error and the remainder of the rejection was clear. Applicant had sufficient time to clarify this issue by contacting the examiner. Since no amendments were made to the claims to overcome Hojeibane, this rejection is made final.

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3. Applicant argues that Hojeibane does not disclose a stent with coil segments and serpentine segments. The stent in Figure 3 is a simplified illustration of two non-coil segments (271,272) connected by coil segments (5). Figures 1 and 4 show the detailed structure of the non-coiled segments, which are considered to be “serpentine”, because they comprise multiple serpentine annular rings.

4. Applicant argues that it is not obvious to modify the length of the coil segment of Hojeibane. Hojeibane teaches that the connector (5) can be varied to increase or decrease the flexibility of the stent (column 7, lines 34-41), and this teaching is considered to encompass the length of the coil segment. It is well known that altering the length of a coil is one way to increase or decrease flexibility. Since this modification only involves a mere change in the size of the component, it is considered to be an obvious modification involving only routine skill in the art.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K. Webb whose telephone number is (571) 272-4706. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SKW
10/13/06

SKW
Julian W. Woo

JULIAN W. WOO
PRIMARY EXAMINER